

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

ETHAN DARNELL, *on behalf of himself and all others similarly situated,* )  
Plaintiff, )  
v. )  
WYNDHAM CAPITAL MORTGAGE, INC., )  
Defendant. )  
\_\_\_\_\_  
)

CASE NO. 3:20-cv-00690-FDW-DSC

**DEFENDANT WYNDHAM CAPITAL MORTGAGE, INC.’S MOTION TO  
DISMISS CLASS ACTION COMPLAINT PURSUANT TO FEDERAL RULES OF  
CIVIL PROCEDURE 12(B)(1) AND 12(B)(6)**

Defendant Wyndham Capital Mortgage, Inc. (“Wyndham”) moves this Court to dismiss Plaintiff Ethan Darnell’s (“Plaintiff”) Class Action Complaint, ECF No. 1 (“Complaint”) pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

First, the Court lacks subject matter jurisdiction because Plaintiff fails to allege an injury-in-fact sufficient to confer Article III standing. Second, Plaintiff fails to allege a single plausible claim for relief:

1. Plaintiff’s negligence claim fails because the common law duties that he seeks to impose do not exist, and he does not allege cognizable damages;
2. Plaintiff’s claim for violation of Florida’s Deceptive and Unfair Trade Practices Act fails because he does not allege any deceptive or unfair practice, or any direct damages;
3. Plaintiff’s breach of implied contract claim fails because he does not plead the requisite meeting of the minds on the security standards he seeks to unilaterally impose on Wyndham;

4. Plaintiff's unjust enrichment claim fails because he got exactly what he paid for—two home mortgage loans;
5. Plaintiff's breach of confidence claim fails because there is no confidential relationship, and no court applying applicable law has ever recognized this claim in the data breach context; and
6. Plaintiff's declaratory judgment claim fails because a declaratory judgment is a remedy, not a cause of action.

For these reasons, which are set forth more fully in Defendant's accompanying Memorandum of Law in Support, the Court should dismiss the Complaint with prejudice.

Respectfully submitted January 25, 2021.

s/ Ross R. Barton

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## **CERTIFICATE OF SERVICE**

I certify that on January 25, 2021, I electronically filed this Motion with the Clerk of Court using the CM/ECF system, which will send notification to the following people:

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